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**Subject: Vendor Sanction System**

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Effective Date: October 1, 2007

Revised from: October 1, 2006

**Policy:** Kansas WIC vendors determined to be in violation of WIC program policies and procedures, federal regulations, state statutes, the WIC Vendor Participation Contract or the Vendor Procedures Manual shall be sanctioned as indicated below.

Vendor violations may be intentional or unintentional. The Kansas WIC program may refer vendors who commit fraud and/or abuse of the WIC program to federal, state or local authorities for prosecution under applicable statutes. The WIC program has two levels of violations: those that result in Kansas WIC program sanctions and those that result in federally mandated sanctions.

The Kansas WIC program detects violations through monitoring, undercover buys, data analysis and reports from WIC clients and Local Agencies (LA). Vendors who commit fraud and abuse may be prosecuted under federal, state and local laws and may be fined or imprisoned in addition to program sanctions.

Imposed sanctions may include warning letters, mandatory training sessions, administrative fines, monetary claims, Civil Money Penalties (CMP), suspensions, terminations or disqualifications from the WIC program, or any combination of sanctions.

In addition to the sanctions mandated by federal regulations, the State Agency (SA) will institute program sanctions. Each instance of a violation of Kansas WIC program rules has a set point value. The accumulation of fifteen (15) findings points or more within a twelve month (12) period will result in termination of the Vendor Participation Contract and a six month (6) disqualification from the Kansas WIC program.

Program sanctions can also take the form of warning letters with or without mandatory training session(s) and monetary fines. The following table lists Kansas WIC program sanctions:

| Points  | Sanction   | Time Frame   |
|---------|--|--|
| 3 - 5   | Warning Letter with possible Mandatory Training session(s) | Points will accumulate for a one-year period, beginning October 1. |
| 6 - 9   | \$100.00 fine  |  |
| 10 - 14 | \$250.00 fine  |  |
| 15 +    | Termination of Contract and six (6) month disqualification |  |

If a vendor is disqualified from the Kansas WIC program, that vendor may also be subjected to a termination from the Food Stamp Program (FSP). Likewise, a vendor disqualified from the FSP may have its WIC authorization terminated.

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The State Agency must provide written notice of any sanctions imposed against a vendor. The notice must specify:

- the sanction being imposed,
- the effective date of the sanction,
- the reasons for the sanction, and
- explain the vendor's right to and the procedures to follow to obtain an administrative review.

Notice must be given prior to any sanction being imposed, with the exception of disqualification due to conviction of trafficking WIC food instruments.

**Reference: 7 CFR § 246.12**

**Procedure:**

1. Violations under Sections A and B will remain on the vendor's record for sanction purposes for 12 calendar months from the date of the first violation. If the SA is able to determine that the vendor has complied within the following 12 months after being sanctioned for a violation in section A or B, then any subsequent incidence of that violation will be considered an initial incidence of that violation.

**Section A – State Agency Imposed Sanctions for Administrative and Procedural Violations**

| <b>Violation</b>   | <b>Points</b> |
|--|---------------|
| 1. Failure to post the State approved WIC decal in a highly visible location                             | 1             |
| 2. Inappropriate use of the WIC logo and acronym   | 1             |
| 3. Failure to display the current price of an authorized WIC food item on the item, shelf or nearby sign | 1             |
| 4. Failure to respond timely to dated material   | 1             |
| 5. Failure to submit a Quarterly Price Assessment (QPA) by date indicated                                | 1             |
| 6. Failure to verify identity of WIC client  | 1             |
| 7. Failure to allow WIC clients to use coupons or other promotional specials                             | 1             |
| 8. Failure to offer WIC clients the same courtesies offered other customers                              | 1             |
| 9. Contacting a WIC client in an attempt to recover funds for WIC checks not paid                        | 1             |
| 10. Collecting sales tax on a WIC transaction  | 1             |

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| <b>Violation</b>  | <b>Points</b> |
|---|---------------|
| 11. Maintaining stock of WIC foods on shelves past the manufacturer's expiration date printed on the package and/or container | 2             |
| 12. Inappropriate and/or unauthorized use of the Kansas WIC vendor stamp  | 2             |
| 13. Failure to adhere to the approved procedures in accepting a WIC check   | 2             |
| 14. Failure to maintain minimum stock requirements  | 2             |

**Section B – State Agency Imposed Sanctions for Fraud and Abuse**

| <b>Violation</b>   | <b>Points</b>  |
|--|--|
| 1. Failure to attend training as required by the Kansas WIC program  | 6  |
| 2. Issuing rain checks for any food listed on the WIC check  | 6  |
| 3. Providing false or misleading information on the WIC Quarterly Price Assessment (QPA)   | 6  |
| 4. Threaten or verbally or physically abuse WIC clients  | 10   |
| 5. Allow the return of food purchased with a Kansas WIC check in exchange for cash, credit or non-food items   | 10   |
| 6. Threaten or verbally or physically abuse WIC program personnel in the conduct of official WIC program business  | 10   |
| 7. Failure to provide access to vendor premises and/or in any manner hinder or impede authorized WIC personnel in the act of conducting an on-site education, monitoring, inventory audit or investigation visit | 10   |
| 8. Make a false or misleading statement on a WIC Vendor Application, contract or amendment   | 15   |
| 9. Purchase infant formula from a source that is not listed on the Approved Infant Formula Wholesalers/Retailers/ Manufacturers form   | 15   |
| 10. Assessment of a civil money penalty (CMP) for hardship in the Food Stamp Program (FSP)   | Termination of Contract and disqualification for the period of time for which the vendor would otherwise have been disqualified from the FSP               |
| 11. Mandatory sanction by another WIC State Agency   | Termination of Contract and disqualification from the Kansas WIC program for the length of time as the disqualification assessed by the other State Agency |

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2. Federal Regulations **7CFR § 246.12** require mandatory sanctions be imposed for violations listed in this section and also require that a pattern of incidences of a violation be established before imposing a mandatory sanction for violations number 4, 5, 6, 7, 8 and 9 listed below.

The SA will send the vendor a single warning letter after the first incidence of a violation for violations number 4, 5, 6, 7 and 8 listed below. Additional compliance buys may be conducted after the warning letter is sent. The SA will not send any additional warning letters for subsequent incidences of violations number 4, 5, 6, 7 and 8 listed below prior to imposing the mandatory sanction. (No warning letter will be sent for violation number 9 and 10).

If the SA determines that disqualification of the vendor would result in inadequate participant access, a CMP may be imposed in lieu of disqualification for the violations numbered 2, 3, 4, 5, 6, 7, 8, 9 and 10 listed below.

| <b>Violation</b>  | <b>Number of incidences of the violation which will result in the indicated sanction</b> | <b>Sanction and length of disqualification</b>              |
|---|--|---|
| 1. Vendors <u>convicted</u> of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances [as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)] in exchange for food instruments.             | One  | Termination of contract and permanent disqualification      |
| 2. a. Buying or selling food instruments for cash (trafficking); or<br><br>b. Selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802)) in exchange for food instruments. | One  | Termination of contract and six year (6) disqualification   |
| 3. The sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments.   | One  | Termination of contract and three year (3) disqualification |
| 4. Charging the WIC program more for supplemental foods than non-WIC customers or charging the WIC program more than the current shelf price.   | Three  | Termination of contract and three year (3) disqualification |

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| <b>Violation</b>   | <b>Number of incidences of the violation which will result in the indicated sanction</b> | <b>Sanction and length of disqualification</b>              |
|--|--|---|
| 5. Charging the WIC program for supplemental food not received by the participant.   | Three  | Termination of contract and three year (3) disqualification |
| 6. Receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or unauthorized person   | Three  | Termination of contract and three year (3) disqualification |
| 7. Providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C § 802), in exchange for food instruments.   | Three  | Termination of contract and three year (3) disqualification |
| 8. Providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.   | Three  | Termination of contract and three year (3) disqualification |
| 9. Claiming reimbursement for the sale of an amount of specific supplemental food item, which exceeds the stores documented inventory of that supplemental food item for a specific period of time. Each month that a vendor claimed reimbursement for the sale of a specific supplemental food item, which exceeded the vendor's documented inventory of that supplemental food item, shall constitute an incidence of a violation. | Three  | Termination of contract and three year (3) disqualification |
| 10. Vendors who have been disqualified from the FSP shall be disqualified from the WIC Program. The disqualification shall be for the same length of time as the FSP disqualification and may begin at a later date than the FSP disqualification. The disqualification is not subject to administrative or judicial reviews under the WIC Program   |  |   |

**3. Multiple Violations during a Single Investigation**

- a. If SA determines during the course of a single investigation a vendor has committed multiple violations, which may include violations subject to SA sanctions or federally mandated sanctions, the SA shall sanction the vendor for the most serious sanction.

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**4. Civil Money Penalty**

- a. If the SA determines that disqualification of a Vendor would result in inadequate participant access, a civil money penalty will be imposed. The civil money penalty amount shall be determined by using the formula in USDA Federal Regulations 7 C.F.R. § 246.12 (l) (1) (x). The formula is as follows:

Step I: Multiply 10% (.10) times the average monthly redemptions for the previous six calendar month period ending with the month preceding the month during which the notification of violation is dated.

Step II: Multiply the product of Step I by the number of months of the disqualification period.

For example, if a vendor were issued a sanction of 6 months disqualification in July, the SA would compile the average monthly redemption for the months of January through June. The average monthly redemption would then be multiplied 10%. That figure would be multiplied by 6 (for the 6 month disqualification period).

Vendor A averages \$5,000 for the months February through July so  $\$5,000 \times 10\% = \$500$ . Then  $\$500 \times 6 = \$3,000.00$ . This is the amount of the civil money penalty if the vendor cannot be disqualified due to participant access.

The result of Step II will be the civil money penalty imposed. A civil money penalty shall not exceed \$10,000 for each violation.

If the SA determines during the course of a single investigation that a vendor has committed multiple violations; the SA must impose a civil money penalty for each violation.

The total amount of civil money penalties for violations investigated as part of a single investigation shall not exceed \$40,000.

A civil money penalty shall not be imposed in lieu of disqualification for a third or subsequent sanction for violation listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, 9, and 10.

Vendors that have been convicted of trafficking (Mandatory Sanctions Under Federal Regulations - Item 1) in food instruments or selling firearms, ammunition, explosives or controlled substances in exchange for food instruments will be permanently disqualified from the WIC program. A civil money penalty in lieu of disqualification will not be considered even if disqualification of the vendor would result in inadequate participant access or if the vendor had at the time of the violation an effective policy and program in effect to prevent trafficking and the

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ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

If a vendor does not pay, partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the SA must disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most severe violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

- b. Money received by the SA as a result of civil money penalties or fines assessed against a vendor or any interest charged in the collection of these penalties and fines shall be considered as program income. As program income, these monies will be used to support WIC program objectives.

5. Second Mandatory Sanction

- a. A vendor who previously has been assessed a sanction for violations listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, and 9 and if the vendor receives another sanction for any of these violations, the second sanction will be doubled.

6. Third or Subsequent Mandatory Sanction

- a. A vendor who previously has been assessed two or more sanctions for violations listed in Mandatory Sanctions Under Federal Regulations, items 2, 3, 4, 5, 6, 7, 8, and 9 and if the vendor receives another sanction for any of these violations, the third sanction and all subsequent sanctions will be doubled.

7. Effective Date of Sanctions against Vendors

- a. The State agency must make denials of authorization and disqualifications effective on the date of receipt of the notice of adverse action. The State Agency must make all other adverse actions effective no earlier than 15 days after the date of the notice of adverse action and no later than 90 days after the date of the notice of adverse action or, in the case of an adverse action that is subject to fair hearing, no later than the date the vendor receives the review decision.